

AMENDED IN SENATE JUNE 24, 1996

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 3088

Introduced by Assembly Member Machado

February 23, 1996

An act to amend Section 366.21 of the Welfare and Institutions Code, relating to juveniles.

LEGISLATIVE COUNSEL'S DIGEST

AB 3088, as amended, Machado. Dependent children.

Under existing law, if a dependent child of the juvenile court is not returned to the custody of a parent or guardian at the review hearing held 12 months after the initial dispositional hearing, the court is required to take specified action, which may include ordering that a hearing be held within 120 days in which parental rights may be terminated if there is clear and convincing evidence that reasonable family reunification services have been provided or offered to the parents.

This bill would provide that evidence that the minor has been placed with a foster family that is eligible to adopt a minor, or has been placed in a preadoptive home, *in and of itself*, shall not be ~~considered in determining if reasonable services have been provided or offered~~ *deemed a failure to provide or offer reasonable services*.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 366.21 of the Welfare and
2 Institutions Code, as amended by Section 2 of Chapter 540
3 of the Statutes of 1995, is amended to read:

4 366.21. (a) Every hearing conducted by the juvenile
5 court reviewing the status of a dependent child shall be
6 placed on the appearance calendar. The court shall advise
7 all persons present at the hearing of the date of the future
8 hearing, of their right to be present and represented by
9 counsel.

10 (b) Except as provided in Section 366.23 and
11 subdivision (a) of Section 366.3, notice of the hearing shall
12 be mailed by the probation officer to the same persons as
13 in the original proceeding, to the minor's parent or
14 guardian, to the foster parents, community care facility,
15 or foster family agency having physical custody of the
16 minor in the case of a minor removed from the physical
17 custody of his or her parent or guardian, and to the
18 counsel of record if the counsel of record was not present
19 at the time that the hearing was set by the court, by
20 first-class mail addressed to the last known address of the
21 person to be notified, or shall be personally served on
22 those persons, not earlier than 30 days nor later than 15
23 days preceding the date to which the hearing was
24 continued. Service of a copy of the notice personally or by
25 certified mail return receipt requested, or any other form
26 of actual notice is equivalent to service by first-class mail.

27 The notice shall contain a statement regarding the
28 nature of the hearing to be held and any change in the
29 custody or status of the minor being recommended by the
30 supervising agency. The notice to the foster parent shall
31 indicate that the foster parent may attend all hearings or
32 may submit any information he or she deems relevant to
33 the court in writing.

34 (c) At least 10 calendar days prior to the hearing the
35 probation officer shall file a supplemental report with the
36 court regarding the services provided or offered to the
37 parent or guardian to enable them to assume custody, the
38 progress made, and, where relevant, the prognosis for

1 return of the minor to the physical custody of his or her
2 parent or guardian, and make his or her recommendation
3 for disposition. If the recommendation is not to return the
4 minor to a parent or guardian, the report shall specify
5 why the return of the minor would be detrimental to the
6 minor. The probation officer shall provide the parent or
7 guardian with a copy of the report, including his or her
8 recommendation for disposition, at least 10 calendar days
9 prior to the hearing. In the case of a minor removed from
10 the physical custody of his or her parent or guardian, the
11 probation officer shall provide a summary of his or her
12 recommendation for disposition to the counsel for the
13 minor, any court-appointed child advocate, foster
14 parents, community care facility, or foster family agency
15 having the physical custody of the minor at least 10
16 calendar days before the hearing.

17 (d) Prior to any hearing involving a minor in the
18 physical custody of a community care facility or foster
19 family agency that may result in the return of the minor
20 to the physical custody of his or her parent or guardian,
21 or in adoption or the creation of a legal guardianship, the
22 facility or agency shall file with the court a report
23 containing its recommendation for disposition. Prior to
24 such a hearing involving a minor in the physical custody
25 of a foster parent, the foster parent may file with the court
26 a report containing his or her recommendation for
27 disposition. The court shall consider the report and
28 recommendation filed pursuant to this subdivision prior
29 to determining any disposition.

30 (e) At the review hearing held six months after the
31 initial dispositional hearing, the court shall order the
32 return of the minor to the physical custody of his or her
33 parents or guardians unless, by a preponderance of the
34 evidence, it finds that the return of the child would create
35 a substantial risk of detriment to the physical or emotional
36 well-being of the minor. The probation department shall
37 have the burden of establishing that detriment. The
38 failure of the parent or guardian to participate regularly
39 in any court-ordered treatment programs shall constitute
40 prima facie evidence that return would be detrimental.

1 In making its determination, the court shall review the
2 probation officer's report, shall review and consider the
3 report and recommendations of any child advocate
4 appointed pursuant to Section 356.5, and shall consider
5 the efforts or progress, or both, demonstrated by the
6 parent or guardian and the extent to which he or she
7 cooperated and availed himself or herself of services
8 provided; shall make appropriate findings pursuant to
9 subdivision (a) of Section 366; and where relevant, shall
10 order any additional services reasonably believed to
11 facilitate the return of the minor to the custody of his or
12 her parent or guardian. The court shall also inform the
13 parent or guardian that if the minor cannot be returned
14 home by the next review hearing, a proceeding pursuant
15 to Section 366.26 may be instituted. This section does not
16 apply in a case where, pursuant to Section 361.5, the court
17 has ordered that reunification services shall not be
18 provided.

19 If the minor was removed initially under subdivision
20 (g) of Section 300 and the court finds by clear and
21 convincing evidence that the whereabouts of the parent
22 are still unknown, or the parent has failed to contact and
23 visit the child, the court may schedule a hearing pursuant
24 to Section 366.26 within 120 days. If the court finds by
25 clear and convincing evidence that the parent has been
26 convicted of a felony indicating parental unfitness, the
27 court may schedule a hearing pursuant to Section 366.26
28 within 120 days.

29 If the minor had been placed under court supervision
30 with a previously noncustodial parent pursuant to Section
31 361.2, the court shall determine whether supervision is
32 still necessary. The court may terminate supervision and
33 transfer permanent custody to that parent, as provided
34 for by paragraph (1) of subdivision (a) of Section 361.2.

35 In all other cases, the court shall direct that any
36 reunification services previously ordered shall continue
37 to be offered to the parent or guardian, provided that the
38 court may modify the terms and conditions of those
39 services. If the child is not returned to his or her parent
40 or guardian, the court shall determine whether

1 reasonable services have been provided or offered to the
2 parent or guardian which were designed to aid the parent
3 or guardian in overcoming the problems which led to the
4 initial removal and the continued custody of the minor.
5 The court shall order that those services be initiated or
6 continued.

7 (f) At the review hearing held 12 months after the
8 initial dispositional hearing, the court shall order the
9 return of the minor to the physical custody of his or her
10 parent or guardian unless, by a preponderance of the
11 evidence, it finds that return of the child would create a
12 substantial risk of detriment to the physical or emotional
13 well-being of the minor. The probation department shall
14 have the burden of establishing that detriment. The court
15 shall also determine whether reasonable services have
16 been provided or offered to the parent or guardian which
17 were designed to aid the parent or guardian to overcome
18 the problems which led to the initial removal and
19 continued custody of the minor. The failure of the parent
20 or guardian to participate regularly in any court-ordered
21 treatment programs shall constitute prima facie evidence
22 that the return would be detrimental. In making its
23 determination, the court shall review the probation
24 officer's report and shall consider the efforts or progress,
25 or both, demonstrated by the parent or guardian and the
26 extent to which he or she cooperated and availed himself
27 or herself of services provided. If the minor is not
28 returned to a parent or guardian, the court shall specify
29 the factual basis for its conclusion that the return would
30 be detrimental. The court also shall make a finding
31 pursuant to subdivision (a) of Section 366.

32 (g) If a minor is not returned to the custody of a parent
33 or guardian at the hearing held pursuant to subdivision
34 (f), the court shall do one of the following:

35 (1) Continue the case for up to six months for another
36 review hearing, provided that the hearing shall occur
37 within 18 months of the date the child was originally
38 taken from the physical custody of his or her parent or
39 guardian. The court shall continue the case only if it finds
40 that there is a substantial probability that the minor will

1 be returned to the physical custody of his or her parent
2 or guardian within six months or that reasonable services
3 have not been provided to the parent or guardian. The
4 court shall inform the parent or guardian that if the minor
5 cannot be returned home by the next review hearing, a
6 permanent plan shall be developed at that hearing. The
7 court shall not order that a hearing pursuant to Section
8 366.26 be held unless there is clear and convincing
9 evidence that reasonable services have been provided or
10 offered to the parent or guardian.

11 (2) Order that the minor remain in long-term foster
12 care, if the court finds by clear and convincing evidence,
13 based upon the evidence already presented to it, that the
14 minor is not a proper subject for adoption and has no one
15 willing to accept legal guardianship.

16 (3) Order that a hearing be held within 120 days,
17 pursuant to Section 366.26, if there is clear and convincing
18 evidence that reasonable services have been provided or
19 offered to the parents. Evidence that the minor has been
20 placed with a foster family that is eligible to adopt a
21 minor, or has been placed in a preadoptive home, ~~shall~~
22 ~~not be considered in determining if reasonable services~~
23 ~~have been provided or offered., in and of itself, shall not~~
24 ~~be deemed a failure to provide or offer reasonable~~
25 ~~services.~~

26 (h) In any case in which the court orders that a hearing
27 pursuant to Section 366.26 shall be held, it shall also order
28 the termination of reunification services to the parent.
29 The court shall continue to permit the parent to visit the
30 minor pending the hearing unless it finds that visitation
31 would be detrimental to the minor.

32 (i) Whenever a court orders that a hearing pursuant to
33 Section 366.26 shall be held, it shall direct the agency
34 supervising the child and the licensed county adoption
35 agency, or the State Department of Social Services when
36 it is acting as an adoption agency in counties which are not
37 served by a county adoption agency, to prepare an
38 assessment regarding the likelihood that the minor will be
39 adopted if parental rights are terminated. The assessment
40 shall include:

1 (1) Current search efforts for an absent parent or
2 parents.

3 (2) A review of the amount of and nature of any
4 contact between the minor and his or her parents since
5 the time of placement.

6 (3) An evaluation of the minor's medical,
7 developmental, scholastic, mental, and emotional status
8 and an analysis of whether any of the minor's
9 characteristics would make it difficult to find a person
10 willing to adopt the minor.

11 (4) A preliminary assessment of the eligibility and
12 commitment of any identified prospective adoptive
13 parent or guardian, particularly the caretaker, to include
14 a social history including screening for criminal records
15 and prior referrals for child abuse or neglect, the
16 capability to meet the minor's needs, and the
17 understanding of the legal and financial rights and
18 responsibilities of adoption and guardianship.

19 (5) The relationship of the minor to any identified
20 prospective adoptive parent or guardian, the duration
21 and character of the relationship, the motivation for
22 seeking adoption or guardianship, and a statement from
23 the minor concerning placement and the adoption or
24 guardianship, unless the minor's age or physical,
25 emotional, or other condition precludes his or her
26 meaningful response, and if so, a description of the
27 condition.

28 (j) This section shall apply to minors made dependents
29 of the court pursuant to subdivision (c) of Section 360 on
30 or after January 1, 1989.

31 (k) This section shall remain in effect only until
32 January 1, 1999, and as of that date is repealed, unless a
33 later enacted statute, which is enacted on or before
34 January 1, 1999, deletes or extends that date.

35 SEC. 2. Section 366.21 of the Welfare and Institutions
36 Code, as added by Section 3 of Chapter 540 of the Statutes
37 of 1995, is amended to read:

38 366.21. (a) Every hearing conducted by the juvenile
39 court reviewing the status of a dependent child shall be
40 placed on the appearance calendar. The court shall advise

1 all persons present at the hearing of the date of the future
2 hearing, of their right to be present and represented by
3 counsel.

4 (b) Except as provided in Section 366.23 and
5 subdivision (a) of Section 366.3, notice of the hearing shall
6 be mailed by the probation officer to the same persons as
7 in the original proceeding, to the minor's parent or
8 guardian, to the foster parents, community care facility,
9 or foster family agency having physical custody of the
10 minor in the case of a minor removed from the physical
11 custody of his or her parent or guardian, and to the
12 counsel of record if the counsel of record was not present
13 at the time that the hearing was set by the court, by
14 first-class mail addressed to the last known address of the
15 person to be notified, or shall be personally served on
16 those persons, not earlier than 30 days nor later than 15
17 days preceding the date to which the hearing was
18 continued. Service of a copy of the notice personally or by
19 certified mail return receipt requested, or any other form
20 of actual notice is equivalent to service by first-class mail.

21 The notice shall contain a statement regarding the
22 nature of the hearing to be held and any change in the
23 custody or status of the minor being recommended by the
24 supervising agency. The notice to the foster parent shall
25 indicate that the foster parent may attend all hearings or
26 may submit any information he or she deems relevant to
27 the court in writing.

28 (c) At least 10 calendar days prior to the hearing the
29 probation officer shall file a supplemental report with the
30 court regarding the services provided or offered to the
31 parent or guardian to enable them to assume custody, the
32 progress made, and, where relevant, the prognosis for
33 return of the minor to the physical custody of his or her
34 parent or guardian, and make his or her recommendation
35 for disposition. If the recommendation is not to return the
36 minor to a parent or guardian, the report shall specify
37 why the return of the minor would be detrimental to the
38 minor. The probation officer shall provide the parent or
39 guardian with a copy of the report, including his or her
40 recommendation for disposition, at least 10 calendar days

1 prior to the hearing. In the case of a minor removed from
2 the physical custody of his or her parent or guardian, the
3 probation officer shall provide a summary of his or her
4 recommendation for disposition to the counsel for the
5 minor, any court-appointed child advocate, foster
6 parents, community care facility, or foster family agency
7 having the physical custody of the minor at least 10
8 calendar days before the hearing.

9 (d) Prior to any hearing involving a minor in the
10 physical custody of a community care facility or foster
11 family agency that may result in the return of the minor
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13 or in adoption or the creation of a legal guardianship, the
14 facility or agency shall file with the court a report
15 containing its recommendation for disposition. Prior to
16 such a hearing involving a minor in the physical custody
17 of a foster parent, the foster parent may file with the court
18 a report containing its recommendation for disposition.
19 The court shall consider the report and recommendation
20 filed pursuant to this subdivision prior to determining any
21 disposition.

22 (e) At the review hearing held six months after the
23 initial dispositional hearing, the court shall order the
24 return of the minor to the physical custody of his or her
25 parents or guardians unless, by a preponderance of the
26 evidence, it finds that the return of the child would create
27 a substantial risk of detriment to the physical or emotional
28 well-being of the minor. The probation department shall
29 have the burden of establishing that detriment. The
30 failure of the parent or guardian to participate regularly
31 in any court-ordered treatment programs shall constitute
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33 In making its determination, the court shall review the
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37 the efforts or progress, or both, demonstrated by the
38 parent or guardian and the extent to which he or she
39 cooperated and availed himself or herself of services
40 provided; shall make appropriate findings pursuant to

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2 order any additional services reasonably believed to
3 facilitate the return of the minor to the custody of his or
4 her parent or guardian. The court shall also inform the
5 parent or guardian that if the minor cannot be returned
6 home by the next review hearing, a proceeding pursuant
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18 convicted of a felony indicating parental unfitness, the
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24 still necessary. The court may terminate supervision and
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27 In all other cases, the court shall direct that any
28 reunification services previously ordered shall continue
29 to be offered to the parent or guardian, provided that the
30 court may modify the terms and conditions of those
31 services.

32 If the child is not returned to his or her parent or
33 guardian, the court shall determine whether reasonable
34 services have been provided or offered to the parent or
35 guardian which were designed to aid the parent or
36 guardian in overcoming the problems which led to the
37 initial removal and the continued custody of the minor.
38 The court shall order that those services be initiated or
39 continued.

1 (f) At the review hearing held 12 months after the
2 initial dispositional hearing, the court shall order the
3 return of the minor to the physical custody of his or her
4 parent or guardian unless, by a preponderance of the
5 evidence, it finds that return of the child would create a
6 substantial risk of detriment to the physical or emotional
7 well-being of the minor. The probation department shall
8 have the burden of establishing that detriment. The court
9 shall also determine whether reasonable services have
10 been provided or offered to the parent or guardian which
11 were designed to aid the parent or guardian to overcome
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13 continued custody of the minor. The failure of the parent
14 or guardian to participate regularly in any court-ordered
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17 determination, the court shall review the probation
18 officer's report and shall consider the efforts or progress,
19 or both, demonstrated by the parent or guardian and the
20 extent to which he or she cooperated and availed himself
21 or herself of services provided. If the minor is not
22 returned to a parent or guardian, the court shall specify
23 the factual basis for its conclusion that the return would
24 be detrimental. The court also shall make a finding
25 pursuant to subdivision (a) of Section 366.

26 (g) If a minor is not returned to the custody of a parent
27 or guardian at the hearing held pursuant to subdivision
28 (f), the court shall do one of the following:

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30 review hearing, provided that the hearing shall occur
31 within 18 months of the date the child was originally
32 taken from the physical custody of his or her parent or
33 guardian. The court shall continue the case only if it finds
34 that there is a substantial probability that the minor will
35 be returned to the physical custody of his or her parent
36 or guardian within six months or that reasonable services
37 have not been provided to the parent or guardian. The
38 court shall inform the parent or guardian that if the minor
39 cannot be returned home by the next review hearing, a
40 permanent plan shall be developed at that hearing. The

1 court shall not order that a hearing pursuant to Section
2 366.26 be held unless there is clear and convincing
3 evidence that reasonable services have been provided or
4 offered to the parent or guardian.

5 (2) Order that the minor remain in long-term foster
6 care, if the court finds by clear and convincing evidence,
7 based upon the evidence already presented to it, that the
8 minor is not a proper subject for adoption and has no one
9 willing to accept legal guardianship.

10 (3) Order that a hearing be held within 120 days,
11 pursuant to Section 366.26, if there is clear and convincing
12 evidence that reasonable services have been provided or
13 offered to the parents. Evidence that the minor has been
14 placed with a foster family that is eligible to adopt a
15 minor, or has been placed in a preadoptive home, ~~shall~~
16 ~~not be considered in determining if reasonable services~~
17 ~~have been provided or offered.~~, *in and of itself, shall not*
18 *be deemed a failure to provide or offer reasonable*
19 *services.*

20 (h) In any case in which the court orders that a hearing
21 pursuant to Section 366.26 shall be held, it shall also order
22 the termination of reunification services to the parent.
23 The court shall continue to permit the parent to visit the
24 minor pending the hearing unless it finds that visitation
25 would be detrimental to the minor.

26 (i) Whenever a court orders that a hearing pursuant to
27 Section 366.26 shall be held, it shall direct the agency
28 supervising the child and the licensed county adoption
29 agency, or the State Department of Social Services when
30 it is acting as an adoption agency in counties which are not
31 served by a county adoption agency, to prepare an
32 assessment which shall include:

33 (1) Current search efforts for an absent parent or
34 parents.

35 (2) A review of the amount of and nature of any
36 contact between the minor and his or her parents since
37 the time of placement.

38 (3) An evaluation of the minor's medical,
39 developmental, scholastic, mental, and emotional status.

1 (4) A preliminary assessment of the eligibility and
2 commitment of any identified prospective adoptive
3 parent or guardian, particularly the caretaker, to include
4 a social history including screening for criminal records
5 and prior referrals for child abuse or neglect, the
6 capability to meet the minor's needs, and the
7 understanding of the legal and financial rights and
8 responsibilities of adoption and guardianship.

9 (5) The relationship of the minor to any identified
10 prospective adoptive parent or guardian, the duration
11 and character of the relationship, the motivation for
12 seeking adoption or guardianship, and a statement from
13 the minor concerning placement and the adoption or
14 guardianship, unless the minor's age or physical,
15 emotional, or other condition precludes his or her
16 meaningful response, and if so, a description of the
17 condition.

18 (6) An analysis of the likelihood that the minor will be
19 adopted if parental rights are terminated.

20 (j) This section shall apply to minors made dependents
21 of the court pursuant to subdivision (c) of Section 360 on
22 or after January 1, 1989.

23 (k) This section shall become operative January 1,
24 1999.

